UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BUDIMIR DAMNJANOVIC and
DESANKA DAMNJANOVIC,

Plaintiffs,

v.

Civil No. 14-11920
HON. LINDA V. PARKER
MAG. J. MONA K. MAJZOUB

UNITED STATES DEPARTMENT OF THE AIR FORCE, SECRETARY DEBORAH LEE JAMES, *in her official capacity*, UNITED STATES DEPARTMENT OF DEFENSE, SECRETARY CHARLES T. HAGEL, *in his official capacity*, and UNITED STATES OF AMERICA,

Defendants.

______________________________________/

DEFENDANTS' ANSWER TO COMPLAINT AND JURY DEMAND

Defendants, the United States Department of the Air Force *et al.*, hereby answer Plaintiffs' Complaint and Jury Demand, as follows, using the same headings and paragraph numbers used by Plaintiffs. Based on current information and belief, all allegations in the Complaint and Jury Demand (the Complaint) are denied, except for those expressly admitted below. The allegations of Counts 2, 3, and 4 are not addressed as they have been rendered moot by the Court's Order of

September 22, 2015 (Dkt No. 22). Pursuant to the Court's Order of October 29, 2015 (Dkt. No. 25), this Answer is timely filed.

1. Regarding paragraph 1, Defendants admit only that Plaintiffs Budimer Damnjanovic and Desanka Damnjanovic (collectively, Plaintiffs) are the named inventors listed on U.S. Patent Application Serial Number 11/881,492 (the '492 Application). To the extent there are any other factual allegations in paragraph 1, they are denied.

2. Regarding paragraph 2, Defendants admit only that the prosecution history of the '492 Application indicates that the United States Patent and Trademark Office (USPTO), in January 2009, issued a secrecy order on the '492 application pursuant to 35 U.S.C. § 181. The prosecution history further indicates that the Defendant Department of the Air Force (Air Force) recommended issuance of the secrecy order in 2009 and continuation of the same secrecy order in 2013. In 2014, the Air Force recommended rescission of the secrecy order. To the extent there are any other factual allegations in paragraph 2, they are denied.

3. Regarding paragraph 3, Defendants admit only that Plaintiffs' Complaint seeks "just compensation under 35 U.S.C. § 183 for the damages and/or use of their invention by and from" the various named Defendants. Defendants deny Plaintiffs' allegations seeking (i) compensation for unjust enrichment under

Michigan common law and (ii) an order requiring Defendants "to enact rules and regulations enabling the Defendants to carry out the requirements of 35 U.S.C. § 183," as moot, given that the Court has dismissed these claims. To the extent there are any other factual allegations in paragraph 3, they are also denied.

4. Defendants deny the allegations of paragraph 4 as moot because the Court has dismissed Plaintiffs' claims challenging the constitutionality of the Invention Secrecy Act of 1951, codified at 35 U.S.C. §§ 181-188.

PARTIES

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, therefore, deny them.

6. Regarding paragraph 6, Defendants admit that the Air Force is a military department within the Department of Defense of the United States, which itself is a government department. Defendants further admit that the Air Force was established under the National Security Act of 1947. To the extent that there are any other factual allegations in paragraph 6, they are denied.

7. Regarding paragraph 7, Defendants admit only that Deborah Lee James is the Secretary of the Air Force, and thus heads the Department of the Air Force. Defendants contend that the remaining allegations in paragraph 7 constitute

conclusions of law to which no answer is required. To the extent they may be deemed allegations of fact, they are denied.

8. Regarding paragraph 8, Defendants admit only that the United States Department of Defense is an executive department of the United States government that, *inter alia*, supervises the Department of the Air Force. To the extent that there are any other factual allegations in paragraph 8, they are denied.

9. Regarding paragraph 9, Defendants admit only that Defendant Charles T. Hagel was serving as Secretary of Defense at the time Plaintiffs' Complaint was filed. Ashton Carter is presently serving as the Secretary of Defense, the chief executive officer of the Department of Defense.[1] To the extent that there are any other factual allegations in paragraph 9, they are denied.

10. Defendants admit the allegations of paragraph 10.

JURISDICTION AND VENUE

11. The allegations in paragraph 11 are conclusions of law to which no response is required. To the extent a response is deemed to be required, Defendants admit only that this court has jurisdiction over claims under 35 U.S.C. § 183 when claimant is a resident of this District. Defendants otherwise deny the remaining

[1] As it appears that Mr. Hagel was being sued in his official capacity as the Secretary of Defense, Mr. Carter should be substituted for Mr. Hagel.

allegations of paragraph 11, including those allegations rendered moot by the Court's Order of September 22, 2015.

12. The allegations in paragraph 12 are conclusions of law to which no response is required. To the extent a response is deemed to be required, Defendants deny the allegations in paragraph 12, as having been dismissed, and thereby rendered moot, by the Court's Order of September 22, 2015.

13. The allegations in paragraph 13 are conclusions of law to which no response is required. To the extent a response is deemed to be required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, therefore, deny them.

14. The allegations in paragraph 14 are conclusions of law to which no response is required. To the extent a response is deemed to be required, Defendants admit only that this Court has authority to award attorneys' fees pursuant to 28 U.S.C. § 2412. Any other allegations in paragraph 14 are denied.

BACKGROUND

15. Regarding paragraph 15, Defendants hereby repeat its responses to paragraphs 1-14 of the Complaint above, as if fully set forth within.

16. Defendants admit the allegations of paragraph 16.

17. Regarding paragraph 17, Defendants admit only that the USPTO issued a secrecy order on the ’492 application on January 22, 2009 and renewed that order on November 21, 2013, at the recommendation of the Air Force. To the extent there are any other factual allegations in paragraph 17, they are denied.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and, therefore, deny them.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and, therefore, deny them.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and, therefore, deny them.

21. Regarding paragraph 21, Defendants admit only that the USPTO issued a Notice of Allowability for claims contained within ’492 application on November 21, 2011, and that Form D-10, provided by the Examiner in that Notice, states that the ’492 application “will be withheld from issue during such period as the national interest requires.” To the extent that there are any other factual allegations in paragraph 21, they are denied.

22. Regarding paragraph 22, based on present information and belief, Defendants admit only that Plaintiffs contacted the Air Force by a letter dated July 11, 2012, seeking compensation pursuant to 35 U.S.C. § 183. Subsequently, in a

letter dated November 8, 2012, Plaintiffs submitted an administrative claim. Any other allegations in paragraph 22 are denied.

23. Regarding paragraph 23, Defendants admit that Plaintiffs submitted an administrative claim, and the Air Force determined that the submission met the requirements for proper submission of that claim. Defendants further admit that Plaintiffs and the Air Force exchanged correspondence from November 8, 2012 until March 2014, when the Air Force denied the claim. Any other allegations in paragraph 23 are denied.

24. Defendants deny the allegations in paragraph 24. Answering further, Defendants assert that the Air Force was under no obligation to "cooperate[] [with] or assist[] Plaintiffs in evaluating their Invention," but the Air Force did cooperate with and assist Plaintiffs in resolving the administrative claim, though the claim was ultimately denied.

25. Regarding paragraph 25, Defendants admit that the Air Force denied Plaintiffs' administrative claim on March 20, 2014.

26. Regarding paragraph 26, Defendants admit that the requirements of 35 U.S.C. § 183 for jurisdiction in this Court have been satisfied as a result of Plaintiffs' filing of an administrative claim with the agency and the head of the agency making a determination of the amount of compensation due. Defendants are without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 26 and, therefore, deny them.

COUNT 1
JUST COMPENSATION PURSUANT TO 35 U.S.C. § 183

27. Regarding paragraph 27, Defendants hereby repeat its responses to paragraphs 1-26 of the Complaint above, as if fully set forth within.

28. Based on present information and belief, Defendants deny the allegations in paragraph 28.

29. Defendants deny the allegations in paragraph 29.

30. Defendants deny the allegations in paragraph 30.

31. The allegations in paragraph 31 are conclusions of law to which no response is required. To the extent a response is deemed to be required, Defendants admit only that the secrecy order at issue in this action does contain provisions restricting the disclosure of information to third parties.

32. Defendants deny the allegations in paragraph 32.

33. Regarding paragraph 33, Defendants admit only that Plaintiffs filed an administrative claim with the agency and the head of the agency rendered a determination of the amount of compensation due. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 and, therefore, deny them.

34. Regarding paragraph 34, Defendants admit only that the Air Force did deny Plaintiffs' administrative claim for compensation under 35 U.S.C. § 183. Any other allegations in paragraph 34 are denied.

35. Based on present information and belief, Defendants deny the allegations in paragraph 35.

36. Regarding paragraph 36, Defendants admit only that the determination of the Air Force on the administrative claims resulted in no compensation to Plaintiffs pursuant to the requirements of 35 U.S.C. § 183. The remaining allegations in paragraph 36 are vague. Accordingly, Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 36 and, therefore, deny them.

37. Defendants deny the allegations in paragraph 37.

38. Paragraph 38 is a statement of Plaintiffs' personal belief that cannot be fairly admitted or denied. To the extent that paragraph 38 is deemed to contain allegations of fact, Defendants admit only that no agreement regarding compensation has been reached between the parties, as Defendants dispute whether any compensation is due to Plaintiffs. Any other allegations in paragraph 38 are denied.

DEFNEDANTS' RESPONSE TO RELIEF REQUESTED

To the extent that Plaintiffs request relief under 35 U.S.C. § 183 in the paragraph following paragraph 57 (Dkt. No. 1 at 10), Defendants deny that Plaintiffs are entitled to such relief.

DEFENDANTS' RESPONSE TO DEMAND FOR JURY TRIAL

Defendants' deny Plaintiffs' position that a jury demand is proper in this case. Trials by jury are generally prohibited in suits against the United States, unless sovereign immunity is waived. In this case, 35 U.S.C. § 183 does not provide a statutory basis for a jury demand.

DEFENDANTS' FURTHER ANSWER AS TO DEFENSES

A. Plaintiffs are not entitled to any compensation (and have not incurred damages) under 35 U.S.C. § 183.

B. Defendants further assert any other defenses that are presently unknown to Defendants but, which, when ascertained, Defendants prays leave to add to this answer or otherwise give notice to Plaintiffs.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, the Defendants pray as follows:

A. For Judgment in Defendants' favor and against Plaintiffs on all claims;

B. For costs and attorneys' fees incurred in the defense of this matter; and

C. For such other and further relief that the Court deems proper.

Dated: November 4, 2015

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on **November 4, 2015**, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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